



## SENATE BILL 239: Amend NC Business Corporation Act

2013-2014 General Assembly

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<b>Committee:</b>	Senate Judiciary I	<b>Date:</b>	April 15, 2013
<b>Introduced by:</b>	Sens. Clodfelter, Barringer, Brunstetter	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	PCS to First Edition S239-CSTG-22		Committee Counsel

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**SUMMARY:** *The PCS to Senate Bill 239 would revise the Business Corporation Act (BCA) to incorporate changes made to the American Bar Association's Model Corporation Act, as recommended by the Business Organizations Committee of the Business Law Section of the North Carolina Bar Association. The PCS makes a technical correction in Section 9 of the bill.*

### BILL ANALYSIS:

**Section 1** of the bill amends G.S. 55-6-21(a) to provide that, unless otherwise provided in the articles of incorporation or bylaws, the board may delegate its power to issue shares to one or more corporate officers within limits prescribed by the board.

**Section 2** amends G.S. 55-6-24(a), which authorizes the board to determine the terms under which share options are issued, by extending this authority to officers designated by the board pursuant to G.S. 55-6-21(a).

**Section 3, 4, 5, and 6** incorporate provisions in the Model Act governing the participation in shareholder meetings by remote communication, by repealing G.S. 55-7-08 (Section 4), replacing it with more the detailed provisions in new G.S. 55-7-09 (Section 5), and by making conforming changes to G.S. 55-7-05(a) (Section 3) and G.S. 55-7-20(c) (Section 6).

**Section 7, 8, 9, 11, 13, and 14** amend various sections of the BCA to provide that "force the vote" provisions in merger agreements and other agreements – which require a specified matter to be submitted for approval by the shareholders even if the board later determines that it can no longer recommend shareholder approval of the matter – are effective.

**Section 10** amends G.S. 55-11-04 to simplify the procedure by which sister subsidiaries of a parent owning at least 90% of each subsidiary may merge with each other, by requiring only the approval of the board of directors of the common parent corporation.

**Section 12** amends G.S. 55-12-01 to provide that shareholder approval is not required for a sale of less than all or substantially all of the corporation's assets outside the usual and regular course of business, and to provide that that a sale is conclusively deemed to be of less than all or substantially all of the corporation's assets, thus not requiring shareholder approval, if the corporation retains a continuing business that, for the corporation and its subsidiaries, accounts for 25% of total assets and 25% of income from continuing operations before taxes or revenues from continuing operations.



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**Section 15** authorizes the Revisor of Statutes to print all relevant portions of the Official Comments to the Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

**EFFECTIVE DATE:** This act becomes effective October 1, 2013.

**BACKGROUND:** The North Carolina Business Corporation Act is based upon the Model Business Corporation Act (“Model Act”). Periodically, a committee of the American Bar Association adopts revisions to the Model Act. The Business Organizations Committee (the “Committee”) of the Business Law Section of the North Carolina Bar Association periodically reviews these revisions to the Model Act to recommend whether conforming changes are appropriate for the North Carolina Business Corporation Act. Senate Bill 239 represents the changes recommended by the Committee in response to the Model Act amendments.